

Defendant Cephalon, Inc. (“Cephalon”) hereby moves for leave to file three consolidated briefs in opposition to Plaintiffs’ *Daubert* motions challenging Cephalon’s experts, and in support of this motion sets forth the following:

1. On April 4, 2014, Plaintiffs filed the following eight *Daubert* motions pertaining in whole or in part to experts proffered by Cephalon:
 - a. Plaintiff Federal Trade Commission’s Motion to Exclude Opinions of Louis P. Berneman (Civil Action No. 08-2141, Dkt. No. 278);
 - b. Plaintiff Federal Trade Commission’s Motion to Exclude Certain Opinions of Dr. Allan Myerson and Other Derivative Opinions (Civil Action No. 08-2141, Dkt. No. 279);
 - c. Plaintiff Federal Trade Commission’s Motion to Exclude Opinions of Cephalon’s Ten Patent Experts (Civil Action No. 08-2141, Dkt. No. 280);
 - d. Plaintiff Apotex, Inc.’s *Daubert* No. 1: Motion to Exclude Defendants’ Experts Gardner, Ludwig, Dahling, and Karet (Civil Action No. 06-2768, Dkt. No. 695);
 - e. Plaintiff Apotex, Inc.’s *Daubert* No. 2: Motion to Exclude Certain Testimony by Defendants’ Experts Bell, Snyder, Berneman, Stangle, and Hausman (Civil Action No. 06-2768, Dkt. No. 696);
 - f. Direct Purchaser Class Plaintiffs’ *Daubert* Motion to Exclude the Opinions of Mr. Stoner and Drs. Cooper and Baranski (Civil Action No. 06-1797, Dkt. No. 603);
 - g. Direct Purchaser Class Plaintiffs’ *Daubert* Motion to Exclude Cephalon’s Expert Opinions on Infringement (Civil Action No. 06-1797, Dkt. No. 604);

h. Direct Purchaser Class Plaintiffs' *Daubert* Motion to Exclude Certain

Opinions and Proposed Trial Testimony of Jerry Hausman and Edward A.

Snyder (Civil Action No. 06-1797, Dkt. No. 611).¹

2. Plaintiffs' challenges to Cephalon's experts raise a number of common legal issues.

To reduce the number of pages submitted and avoid repetition, Cephalon proposes to address the common issues in three consolidated briefs:

a. a single brief of no more than 40 pages to address motions seeking to exclude expert testimony on issues relating to the '516 patent;

b. a single brief of no more than 40 pages to address motions seeking to exclude expert testimony on the business transactions between Cephalon and the generic defendants; and

c. a single brief of no more than 25 pages to address motions seeking to exclude economic expert testimony on the application of the rule of reason to the settlements at issue.

3. Under this proposed configuration, the testimony of Eugene Cooper, Bruce Stoner Jr., Joseph Baranski, Markus Antonietti, David Bugay, Lynn van Campen, Robert Williams, and Gerald Dahling would be addressed in the first brief. The testimony of Louis P. Berneman, Allan Myerson, and Ian Karet² would be addressed in the second brief. Finally, the testimony of Edward Snyder and Jerry Hausman would be addressed in the third brief.

¹ Plaintiffs also filed a Motion to Preclude All Expert Testimony Regarding Direct Purchaser Class Plaintiffs "Lost Profits" (Civil Action No. 06-1797, Dkt. No. 617), a Motion to Exclude Portions of the Report of Dr. James Hughes (Civil Action No. 06-1833, Dkt. No. 292), and a Motion to Exclude the Opinions of Gregory K. Bell (Civil Action No. 06-1797, Dkt. No. 605), which pertain to experts designated by Cephalon. Defendants will file individual responses to each of those motions, which are not the subject of this request. In addition, arguments directed to experts retained by Defendants other than Cephalon will be addressed separately.

² A portion of Dr. Dahling's testimony, as it pertains to Teva's intellectual property, would be addressed in the second brief.

4. Given the overlapping issues and arguments raised by Plaintiffs' *Daubert* motions, Cephalon respectfully submits that responding to those motions in this fashion, rather than filing eight (8) separate responses to each motion, will result in a more streamlined and effective presentation to the Court.
5. The Direct Purchaser Plaintiffs, the End Payor Plaintiffs, and Apotex have agreed to Cephalon's proposal. The Federal Trade Commission has stated that it does not object.

WHEREFORE, Cephalon requests the Court grant leave for Cephalon to file the following briefs:

- a) A brief of no more than 40 pages addressing all motions directed to Cephalon's patent experts, including Dr. Dahling's opinion on the reasonableness and strength of Cephalon's positions in the underlying patent litigation;
- b) A brief of no more than 40 pages addressing all motions directed to experts opining on the contemporaneous business transactions, including Dr. Dahling to the extent he opines on Cephalon's assessment of Teva's intellectual property; and
- c) A brief of no more than 25 pages addressing the motions directed to the economic experts offering testimony regarding application of the rule of reason to the settlements at issue.

Dated: May 6, 2014

Respectfully submitted,

/s/ James C. Burling

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CERTIFICATE OF SERVICE

I certify that on the date set forth below the foregoing Cephalon, Inc.'s Unopposed Motion for Leave to File Consolidated Briefing in Opposition to Plaintiffs' *Daubert* Motions was served on all counsel of record via this Court's ECF system.

/s/ Nancy J. Gellman
Nancy J. Gellman

Dated: May 6, 2014